

MEMORANDUM

TO: Max Royle, City Manager

FROM: William Tredik, P.E. Public Works Director

DATE: January 3, 2021

SUBJECT: St. Augustine Beach Resiliency Improvements
Ocean Walk Subdivision Flood Protection
Approval of Contract for Design and Permitting with
Matthews Design Group

BACKGROUND

Ocean Walk is an 18-acre subdivision built in the 1980s, consisting of 55 single family residential lots. The subdivision relies upon a non-functional "accreted-in" roadside swale system which drains Lee Drive to a single point, whereupon runoff is conveyed via a 24" pipe to the Mickler Boulevard drainage system. Due to the non-functional roadside swales, valleys at driveway aprons hold water for significant periods of time after a rainfall event. After reaching Mickler Boulevard, runoff travels via the new pipe south to 16th Street, where it continues both west (to a private pond on Old Beach Road) and south to the 11th Street canal. Both pathways converge at Lakeside Park, whereupon flow continues west under S.R. A1A to the Mizell Road pond, where natural processes remove nutrients prior to its discharge to the Matanzas River.

The western portion of Lee Drive is low-lying, with elevations below 5.0 NAVD. Heavy rains in early June 2020 and September 2020 led to localized significant street flooding on Lee Drive. Public Works developed the following three-stage approach to improve the drainage in the Ocean Walk subdivision:

1. Clean downstream conveyances.
2. Install backflow prevention and a stormwater pump-out structure
3. Develop a long-term drainage solution for the Ocean Walk subdivision

Stages 1 and 2 have been completed. Stage 3 began on October 5, 2020, when the City Commission directed staff to advertise a Request for Qualifications (RFQ) to select a professional engineering consultant to develop the Project. RFQ 20-05 was advertised and requested qualifications for the following Stage 3 phases:

- Phase 1 – Drainage study and preliminary engineering
- Phase 2 – Design and permitting services
- Phase 3 – Construction engineering services

On January 4, 2021 the City Commission approved the consultant ranking and authorized the City Manager to negotiate with the topped ranked firm, Matthews Design Group. On March 1, 2021, the Commission approved execution of a contract with Matthews Design Group to conduct the Phase 1 drainage study and preliminary engineering. Matthews Design Group completed Phase 1 and presented their findings at the November 1, 2021 City Commission Meeting.

DISCUSSION

Per the terms of the original RFQ consultant selection, staff has negotiated with Matthews Design Group for Phase 2 - Design and Permitting Services. Matthews Design Group proposes to complete Phase 2 for a lump sum fee of \$76,480, broken down as follows:

1. Supplemental Surveying	\$ 8,625
2. Geotechnical Investigation	\$ 7,475
3. Construction Design Plans	\$ 35,000
4. Permitting	\$ 9,500
5. Meetings and Coordination	\$ 7,500
6. Specifications and Bid Documents	\$ 8,000
7. Direct Reimbursable Expenses	\$ 380

It is the opinion of staff that the proposed fees are appropriate for the work described in the scope of services.

City Attorney review – The City Attorney has reviewed the draft contract and made the following comment:

"I did not see much that concerned me. I did highlight one paragraph on page 4, that I wanted to make sure was not an issue. Will we be connecting this work with other projects or a part of larger drainage projects. We may need to clarify this language, so that would not be an issue."

The paragraph in question is Section 105.I and restricts the Owner's right to use the documents on other projects without the express consent of the Owner's Consultant. This provision is a standard option in EJCDC D-500 Agreements between Owner and Owner's Consultant for Professional Services and does not impact the execution of work associated with the project, nor does it place the City at a contractual disadvantage. Staff and the City Attorney will work with Matthew's Design Group to investigate options for

alternate language in this section of the agreement as deemed necessary and appropriate.

Proposed Design and Permitting Schedule – The design and permitting schedule in the scope of services submitted by Matthews Design Group currently exceeds the task completion dates as outlined in the FDEP Grant Agreement. This can be addressed by either reducing the design and permitting timeline in the Consultant Agreement or by adjusting the design and permitting deliverable dates in the Grant Agreement (or a combination thereof). The first option is preferable as it maximizes construction time in the Grant Agreement, therefore staff will work with Matthews Design Group to reduce the design and permitting schedule as necessary and appropriate prior to the final execution of the agreement.

ACTION REQUESTED

Authorize the City Manager to complete negotiations and execute an agreement with Matthews Design Group in an amount not to exceed \$ 76,480 for the design, permitting and bidding assistance for St. Augustine Beach Resiliency Improvements Ocean Walk Subdivision Flood Protection.

**AGREEMENT BETWEEN OWNER
AND OWNER'S CONSULTANT
FOR PROFESSIONAL SERVICES—
DESIGN PROJECT**

THIS IS AN AGREEMENT effective as of [] ("Effective Date") between City of St. Augustine Beach ("Owner") and Matthews Design Group, LLC ("Owner's Consultant").

Owner's Project, of which Owner's Consultant's services under this Agreement are a part, is generally identified as follows: Ocean Walk Drainage Assessment ("Project").

Designated Representatives. Owner and Owner's Consultant each hereby designates a specific individual to act as representative with respect to the performance of responsibilities under this Agreement. Such an individual shall have authority to transmit instructions, receive information, and render decisions relative to this Agreement on behalf of the party that the individual represents.

1. Owner's Designated Representative: William Tredik, PE, Public Works Director / City Engineer
2. Owner's Consultant's Designated Representative: Rob A. Matthews III, PE, President

Owner and Owner's Consultant further agree as follows:

1.01 *Basic Agreement and Period of Service*

- A. Owner intends to enter into a contract with a designer for the design and permitting of the Project facilities and improvements identified above. Owner hereby retains Owner's Consultant to provide professional services to Owner with respect to the Project, as a consultant and advisor to Owner. Owner's Consultant's services under this Agreement ("Consultant Services") are described in Exhibit A to this Agreement.
- B. Owner's Consultant shall complete the Consultant Services according to the Consultant Services Schedule included in Exhibit A. The Consultant Services Schedule contains schedule commitments of Owner as well as Owner's Consultant. If, through no fault of Owner's Consultant, the orderly and continuous progress of the Consultant Services is impaired, or the Consultant Services are delayed or suspended, then the Consultant Services Schedule, and the rates and amounts of Owner's Consultant's compensation, shall be adjusted equitably.
- C. Owner shall be responsible for all requirements and instructions that it furnishes to Owner's Consultant pursuant to this Agreement, and for the accuracy and completeness of all programs, reports, data, and other information furnished by Owner to Owner's Consultant pursuant to this Agreement. Owner's Consultant may use and rely upon such requirements, programs, instructions, reports, data, and information in performing or furnishing services under this Agreement, subject to any express limitations or reservations applicable to the furnished items.

1.02 *Payment Procedures*

- A. *Invoices:* Owner's Consultant shall prepare invoices in accordance with its standard invoicing practices and submit the invoices to Owner on a monthly basis. Invoices are due and payable within 30 days of receipt. If Owner fails to make any payment due Owner's Consultant for

Services and expenses within 30 days after receipt of Owner's Consultant's invoice, then (1) the amounts due Owner's Consultant will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day, and (2) in addition Owner's Consultant may, after giving 7 days' written notice to Owner, suspend Services under this Agreement until Owner's Consultant has been paid in full all amounts due for Services, expenses, and other related charges. Owner waives any and all claims against Owner's Consultant for any such suspension.

- B. *Payment:* As compensation for Owner's Consultant providing or furnishing the Consultant Services, Owner shall pay Owner's Consultant as set forth in Paragraphs 1.02, 1.03, and 1.04. If Owner disputes an invoice, either as to amount or entitlement, then Owner shall promptly advise Owner's Consultant in writing of the specific basis for doing so, may withhold only that portion so disputed, and must pay the undisputed portion.

1.03 *Basis of Payment—Lump Sum*

- A. Owner shall pay Owner's Consultant as follows:

- 1. A Lump Sum amount of \$76,480.

- a. This fee includes reimbursable expenses for reproduction of up to nine (9) plan sets and stormwater reports for permitting and includes permitting fees for the SJRWMD. Travel to and from site and City offices is also included. Any additional copies of plans or reports will be provided per the attached fee schedule (Attachment 1).

- B. The portion of the compensation amount billed monthly for Consultant Services will be based upon Owner's Consultant's estimate of the percentage of the total Consultant Services actually completed during the billing period.

1.04 *Additional Services:* For Additional Services, Owner shall pay Owner's Consultant an amount equal to the cumulative hours charged in providing the Additional Services by each class of Owner's Consultant's employees, times standard hourly rates for each applicable billing class; plus reimbursement of expenses incurred in connection with providing the Additional Services and Owner's Consultant's subconsultants' charges, if any. Owner's Consultant's standard hourly rates are attached as Attachment 1.

1.05 *General Considerations*

- A. The standard of care for all professional engineering and related services performed or furnished by Owner's Consultant under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. Owner's Consultant makes no warranties, express or implied, under this Agreement or otherwise, in connection with any services performed or furnished by Owner's Consultant.
- B. Subject to the foregoing professional standard of care, in the performance of the Consultant Services the Owner's Consultant and its subconsultants may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.

- C. Owner's Consultant shall maintain, through the term of this Agreement and the term of the Design-Build Contract between Owner and Designer, insurance in the following amounts:

Type	Category	Amount
General Liability	Each Occurrence (Bodily Injury and Property Damage)	\$1,000,000
	General Aggregate	\$2,000,000
Professional Liability	Each Claim Made	\$1,000,000
	Annual Aggregate	\$2,000,000
Automobile Liability	Combined Single Limit (Bodily Injury and Property Damage)	\$1,000,000
Employer's Liability	Bodily injury, each accident	\$2,000,000
	Bodily injury by disease, each employee	\$2,000,000
	Bodily injury/disease, aggregate	\$2,000,000
Excess or Umbrella	Each Occurrence	\$2,000,000
	General Aggregate	\$2,000,000
Workers' Compensation		Statutory

Owner shall be an additional insured under the commercial general liability policy. The additional insured endorsements required for commercial general liability policies shall include both ongoing operations and products and completed operations coverage, through ISO Endorsements CG 20 10 10 01 and CG 20 37 10 01 (together), if such ISO forms are commercially available.

1. Combined limits of a specific liability policy and umbrella/excess policy may be met by primary policy alone, or by combinations of the primary policy and the umbrella/excess policy.
 2. Owner's Consultant shall provide certificates of insurance to Owner.
- D. Owner's Consultant acknowledges that after Owner's Consultant prepares and furnishes the Conceptual Documents to Owner under this Agreement, the Owner will provide the Conceptual Documents to a designer to be selected by Owner. Subject to the professional standard of care, Owner's Consultant shall remain responsible for the quality and technical accuracy of the Conceptual Documents (as prepared and furnished to Owner by Owner's Consultant) after their transfer to Designer, and Owner shall be entitled to rely on the quality and technical accuracy of such Conceptual Documents. Owner's Consultant may state any express limitations or reservations applicable to the content of the Conceptual Documents.
- E. Owner's Consultant shall not at any time supervise, direct, control, or have authority over any Constructor's work, nor shall Owner's Consultant have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any Constructor, or the safety precautions and programs incident thereto, for security or safety at the Project site, nor for any failure of a Constructor to comply with laws

and regulations applicable to such Constructor's furnishing and performing of its work. Owner's Consultant shall not be responsible for the acts or omissions of any Constructor.

- F. Owner's Consultant neither guarantees the performance of any Constructor nor assumes responsibility for any Constructor's failure to furnish and perform its work.
- G. Owner's Consultant's opinions of probable Design Cost are to be made on the basis of Owner's Consultant's experience, qualifications, and general familiarity with design costs, design costs, and the construction industry. However, because Owner's Consultant has no control over the cost of labor, materials, equipment, or services furnished by others, or over designers' or contractors' methods of determining prices, or over competitive bidding or market conditions, Owner's Consultant cannot and does not guarantee that proposals, bids, or actual Design Cost will not vary from opinions of probable construction cost prepared by Owner's Consultant. If Owner requires greater assurance as to probable Design Cost, then Owner agrees to obtain an independent cost estimate.
- H. Owner's Consultant shall not be responsible for any decision made regarding the administration of the Design Contract, or any application, interpretation, clarification, or modification of the Design Contract, other than those made by Owner's Consultant or its subconsultants.
- I. All documents prepared or furnished by Owner's Consultant are instruments of service, and Owner's Consultant retains an ownership and property interest (including the copyright and the right of reuse) in such documents, whether or not the Project is completed. Owner's Consultant grants Owner a limited license to use the documents on the Project, extensions of the Project, and for related uses of the Owner (including but not limited to furnishing the Conceptual Documents to a designer), subject to receipt by Owner's Consultant of full payment due and owing for all Consultant Services relating to preparation of the documents, and subject to the following provisions:
 - 1. Owner acknowledges that such documents (expressly including the Conceptual Documents, if any) are not intended or represented to be suitable for construction purposes on the Project until further developed and completed by a designer selected by Owner (and specifically by licensed engineering or other design professionals in compliance with Laws and Regulations).
 - 2. The limited license to Owner does not include the right to use the documents on other projects without the express consent of Owner's Consultant.
 - 3. Such documents are not suitable for use or reuse by Owner or others on extensions of the Project, on any other project, or for any other use or purpose, without development and completion by licensed engineering or other design professionals in compliance with Laws and Regulations;
 - 4. Any use or reuse of such documents other than as indicated in Paragraph 3.01.D above or elsewhere in this Agreement, or as permitted in this Paragraph 3.01.I, will be at Owner's sole risk and without liability or legal exposure to Owner's Consultant or to its officers, directors, members, partners, agents, employees, and subconsultants.
 - 5. Owner shall indemnify and hold harmless Owner's Consultant and its officers, directors, members, partners, agents, employees, and subconsultants from all claims, damages,

losses, and expenses, including attorneys' fees, arising out of or resulting from any unauthorized use, reuse, or modification of the documents.

6. The limited license to Owner shall not create any rights in third parties, except if so, indicated in this Agreement.
- J. Owner and Owner's Consultant may transmit, and shall accept, Project-related correspondence, documents, text, data, drawings, information, and graphics, in electronic media or digital format, either directly, or through access to a secure Project website, in accordance with a mutually agreeable protocol.
- K. To the fullest extent permitted by law, Owner and Owner's Consultant waive against each other, and the other's employees, officers, directors, members, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to this Agreement or the Project.
- L. The parties acknowledge that Consultant Services do not include any services related to unknown or undisclosed Constituents of Concern. If Owner's Consultant or any other party encounters, uncovers, or reveals an unknown or undisclosed Constituent of Concern, then Owner's Consultant may, at its option and without liability for consequential or any other damages, suspend performance of Consultant Services on the portion of the Project affected thereby until such portion of the Project is no longer affected, or terminate this Agreement for cause if it is not practical to continue providing Consultant Services.
- M. Owner and Owner's Consultant agree to negotiate each dispute between them in good faith during the 30 days after notice of dispute. If negotiations are unsuccessful in resolving the dispute, then the dispute shall be mediated. If mediation is unsuccessful, then the parties may exercise their rights at law.
- N. This Agreement is to be governed by the law of the state in which the Project is located.
- O. Consultant Services do not include: (1) serving as a "municipal advisor" for purposes of the registration requirements of Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) or the municipal advisor registration rules issued by the Securities and Exchange Commission; (2) advising Owner, or any municipal entity or other person or entity, regarding municipal financial products or the issuance of municipal securities, including advice with respect to the structure, timing, terms, or other similar matters concerning such products or issuances; (3) providing surety bonding or insurance-related advice, recommendations, counseling, or research, or enforcement of construction insurance or surety bonding requirements; or (4) providing legal advice or representation.

1.06 Termination

- A. The obligation to continue performance under this Agreement may be terminated:
 1. For cause,
 - a. By either party upon 30 days' written notice in the event of substantial failure by the other party to perform in accordance with the Agreement's terms through no fault of the terminating party.
 - b. Notwithstanding the foregoing, this Agreement will not terminate as a result of a substantial failure under Paragraph 1.06.A.1.a if the party receiving such notice begins,

within 7 days of receipt of such notice, to correct its substantial failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt of notice; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.

2. For convenience, by Owner effective upon Owner's Consultant's receipt of written notice from Owner.

B. In the event of any termination under Paragraph 1.06, Owner's Consultant will be entitled to invoice Owner and to receive full payment for all Services performed or furnished in accordance with this Agreement, plus reimbursement of expenses incurred through the effective date of termination in connection with providing the Services and Owner's Consultant's consultants' charges, if any.

1.07 *Successors, Assigns, and Beneficiaries*

A. Owner and Owner's Consultant are hereby bound and the successors, executors, administrators, and legal representatives of Owner and Owner's Consultant (and to the extent permitted by Paragraph 1.07.B the assigns of Owner and Owner's Consultant) are hereby bound to the other party to this Agreement and to the successors, executors, administrators, and legal representatives (and said assigns) of such other party, with respect to all covenants, agreements, and obligations of this Agreement.

B. Neither Owner nor Owner's Consultant may assign, sublet, or transfer any rights under or interest (including, but without limitation, money that is due or may become due) in this Agreement without the written consent of the other party, except to the extent that any assignment, subletting, or transfer is mandated by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.

C. Unless expressly provided otherwise, nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Owner or Owner's Consultant to any Constructor, other third-party individual or entity, or to any surety for or employee of any of them. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Owner and Owner's Consultant and not for the benefit of any other party.

1.08 *Total Agreement*

A. This Agreement (including any expressly incorporated attachments), constitutes the entire agreement between Owner and Owner's Consultant and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a duly executed written instrument.

1.09 *Definitions*

A. *Conceptual Documents*—Documents prepared by Owner's Consultant on behalf of Owner that describe Owner's goals and requirements for the design project, in graphic form or written text. They may include performance criteria or objectives; budgetary limitations;

quality standards; space, capacity, flexibility, and expandability requirements; drawings and specifications; design objectives, constraints, and criteria; and other documents that show, describe, or define the character, scope, and intent of the Work to be performed or furnished by Designer.

- B. *Constructor*—Any person or entity (not including the Owner's Consultant, its employees, agents, representatives, and consultants), performing or supporting construction activities relating to the Project, including but not limited to contractors, subcontractors, suppliers, Owner's work forces, utility companies, construction managers, designers, testing firms, shippers, and truckers, and the employees, agents, and representatives of any or all of them.
- C. *Constituent of Concern*—Asbestos, petroleum, radioactive material, polychlorinated biphenyls (PCBs), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. ("CERCLA"); (b) the Hazardous Materials Transportation Act, 49 U.S.C. §§5101 et seq.; (c) the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. ("RCRA"); (d) the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; (e) the Clean Water Act, 33 U.S.C. §§1251 et seq.; (f) the Clean Air Act, 42 U.S.C. §§7401 et seq.; or (g) any other federal, State, or local statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.
- D. *Design Cost*—The cost to Owner of the design portion of the Project, as described in the Report or Conceptual Documents to be prepared by Owner's Consultant under this Agreement. The Design Cost will generally be comprised of the design contract price, as duly modified, and therefore will reflect the cost of completion of the design and the construction of the portion of the entire Project encompassed by that design, including engineering and other professional services, and construction labor, services, materials, equipment, insurance, and bonding costs, and allowances for contingencies. Design Cost does not include costs of services of Owner's Consultant under this Agreement; cost of land or rights-of-way, or compensation for damages to property; Owner's costs for legal, accounting, insurance counseling, or auditing services; interest or financing charges incurred in connection with the Project; or the cost of other services to be provided by others to Owner.
- E. *Work*—The entire design and construction, or the various separately identifiable parts thereof, required to be provided under the Design Contract that Owner enters into with Designer. Work includes and is the result of performing or providing all engineering and other professional services, and all labor, services, and documentation necessary to produce such construction; furnishing, installing, and incorporating all materials and equipment into such construction; and may include related services such as testing, start-up, and commissioning, all as required by the Design Contract.

1.10 Exhibits and Attachments:

Exhibit A, Owner's Consultant's Services.

Attachment 1, Owner's Consultant's Standard Hourly Rates and Reimbursable Expenses.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the Effective Date of which is indicated on page 1.

OWNER:

By: _____

Title: _____

Date Signed: _____

OWNER'S CONSULTANT:

By: Rob A. Matthews III

Title: Rob A. Matthews III, President

Date Signed: 12/22/21

Owner's Consultant License or Firm's
Certificate Number (if required): CA#26535

State of Florida

Address for Owner's receipt of notices:

Address for Owner's Consultant's receipt of notices:

Matthews Design Group

7 Waldo Street

St. Augustine, FL 32084

This is **EXHIBIT A**, consisting of [] pages, referred to in and part of the **Agreement between Owner and Owner's Consultant** dated [].

EXHIBIT A: Owner's Consultant's Services

Paragraph 1.01 of the Agreement is supplemented to include the following provisions.

Owner's Consultant shall provide the following as Consultant Services:

PART 1 – BASIC SERVICES

A1.01 *General Advisory Services*

- A. Owner's Consultant shall provide advice to Owner regarding the design project delivery method, including strategies for selecting and contracting with a designer; the objectives to be served by Conceptual Documents, requests for qualifications, and requests for proposals; budget and cost issues; developing interest in the Project on the part of prospective designers and key trade contractors and equipment suppliers; and Project schedule.
- B. Owner's Consultant shall advise Owner regarding engineering and technical issues that arise during the Project.
- C. As Owner's Consultant performs its various advisory obligations, and its duties under the Study and Report Phase, the Design and Permitting Phase, and the RFQ/RFP Phase, the Owner and Owner's Consultant acknowledge that the primary objective is for Owner to enter into a future Design Contract for the Project. Owner's Consultant shall advise Owner before performing Consultant Services that could be more advantageously performed by Designer, to avoid duplication of services, improve the overall Project schedule, or obtain for the Owner the full benefits of the design project delivery method.

A1.02 *Study and Report Phase – Excluded from this contract.*

A1.03 *Design and Permitting Phase*

- A. Owner's Consultant shall:
 - 1. Consult with Owner to define and clarify Owner's requirements for the Project, including design objectives and constraints; space, capacity and performance requirements; flexibility and expandability goals; and budgetary limitations. Identify available data, information, reports, facilities plans, and site evaluations. Design will be based on recommendations from the approved assessment prepared by Matthews Design Group.
 - 2. Identify potential solution(s) to meet Owner's Project requirements, as needed.
 - 3. Study and evaluate the potential solution(s) to meet Owner's Project requirements.
 - 4. Visit the Site(s) to review existing conditions and facilities, unless such visits are not necessary or applicable to meeting the Study and Design objectives.
 - 5. Advise Owner of any need for Owner to obtain, furnish, or otherwise make available to Owner's Consultant additional Project-related data and information, for Owner's

Exhibit A, Owner's Consultant's Services.

EJCDC® D-500, Agreement Between Owner and Owner's Consultant for Professional Services—Design-Build Project.
Copyright ©2016 National Society of Professional Engineers, American Council of Engineering Companies,
and American Society of Civil Engineers. All rights reserved.

Consultant's use in the study and evaluation of potential solution(s) to Owner's Project requirements, and preparation of a related report.

6. After consultation with Owner, recommend to Owner those potential solution(s) which in Owner's Consultant's judgment meet Owner's requirements for the Project.
7. Advise Owner of any need for Owner to provide data or services that are not part of Consultant Services.
8. Identify and analyze relevant requirements of governmental authorities having jurisdiction to review or approve the construction plans to be prepared by Owner's Consultant or having jurisdiction over the Project; consult with such governmental authorities, as necessary.
9. Review any environmental assessments and impact statements furnished by Owner and analyze the effect of any such environmental documents (including any mitigation measures identified in the documents) on the Project, including the contemplated design and construction.
10. Develop a scope of work and survey limits for any topographic and other surveys necessary for design.
11. Specifically, Owner's Consultant will perform the following scope:

a. Phase 2: Design Engineering and permitting

1) Surveying

The MDG team will collect additional survey information within the project area to identify existing improvements and elevations. MDG has teamed with Bradshaw Niles for surveying services. At a minimum, the survey shall include:

- Topography in the area of the proposed stormwater lift station.
- Supplemental topography along proposed stormwater pipe routing
- Location of all surface utility appurtenances for water, sewer, storm, electric, and communication within the project area
- Location of any other aboveground items (mailboxes, posts, etc.) within project area.

Surveying lump sum fee: \$8,625

2) Geotechnical Investigation

The MDG team will collect the necessary geotechnical information in the area of prepare construction plans for the proposed stormwater lift station. To explore the subsurface conditions within the area of the lift station, two Standard Penetration Test (SPT) borings will be performed to a depth of 30 feet. Additionally, eight 5' depth hand augers will be performed in the roadway and drainage areas. Once the proposed field work is completed, our engineers will evaluate the collected field data and soil samples. Laboratory

Exhibit A, Owner's Consultant's Services.

EJCDC® D-500, Agreement Between Owner and Owner's Consultant for Professional Services—Design-Build Project.
Copyright ©2016 National Society of Professional Engineers, American Council of Engineering Companies,
and American Society of Civil Engineers. All rights reserved.

Page 2 of 9

tests on selected soil samples obtained in the field may be performed in order to determine the physical properties of the soils.

The information provided by the field exploration and laboratory testing programs will be utilized to formulate appropriate recommendations to facilitate design and earthwork preparation. A geotechnical engineer, registered in the State of Florida, will oversee the study. The results of our study will be conveyed in a written report.

The written geotechnical report will contain the following information:

1. A brief discussion of the existing site conditions.
2. Pertinent project information.
3. Soil boring logs indicating soil stratification, groundwater levels, and lab testing results.
4. Plan showing the boring locations.
5. An engineering evaluation of the subsurface conditions regarding the proposed construction.
6. Provide site preparation and earthwork recommendations.
7. Provide recommendations to guide foundation design, including shallow foundation design bearing pressures.
8. Provide recommendations for quality control testing services.

Geotechnical Investigation lump sum fee: \$7,475

3) Construction Design Plans

MDG will prepare construction plans for the project based on the recommendations determined from the stormwater assessment. The design will include addition of stormwater collection piping and swales within the Ocean Walk subdivision to collect and convey water to the Mickler Blvd conveyance pipe and to a new stormwater lift station. The stormwater lift station will transfer the stormwater to the existing stormwater conveyance system on 16th Street, lowering the water elevation in the Mickler Blvd system. The lift station will employ 2 – 24" diameter axial flow pumps with submersible electric motors in a cast-in-place wetwell. Control of the pumps will utilize a pressure transducer for elevation control and a weather resistant control panel at the site. Concessions for connection of a backup generator will be accommodated in the design, but the generator will not be installed at this time.

The construction plans will depict project limits of demolition, site grading, and stormwater utilities. Plans will detail the construction work to be completed by the selected contractor, including details and specifications in conformance with COSAB and SJRWMD requirements. Specifically, these plans will include:

1. Site plan describing site layout, required easements, and site improvements.
2. Demolition plan describing items to be removed/retained on the existing site.
3. Grading plan describing site grading details around new lift station site.
4. Stormwater Utility plan describing improvements including references to the appropriate COSAB and SJRWMD standards and the necessary calculations for the new lift station.
5. Construction details as needed to expand on the information in the above plan sets.
6. Stormwater Pollution Prevention Plan (SWPPP).

Construction Design Plans lump sum fee: \$35,000

4) Permitting

MDG will prepare permit application packages with supporting documents to apply for the following construction permits:

1. St Johns River Water Management District Environmental Resource Permit

MDG's proposal includes addressing reasonable comments for up to three rounds of Requests for Information (RFI) from the permitting agencies relating to the scope of work provided by our firm.

Permitting lump sum fee: \$9,500

5) Meetings and Coordination

MDG will conduct a public meeting at the 30% design point to present the design to the neighborhood and to obtain input on aspects of the design. A presentation of the 90% design will be made to the public and Commission to discuss the final design plans and scheduling of permitting and construction. MDG will provide exhibits and documentation as needed for the meetings. It is anticipated that the City of St Augustine Beach will provide the meeting venue, or MDG can coordinate if required. This task also includes meetings with staff as necessary to complete the design.

Meetings and Coordination lump sum fee: \$7,500

6) Specifications and Bid Documents

MDG will prepare drawings, specifications, construction scope, and front-end documents of the final design for use in bidding of the project for construction. An opinion of probable construction costs will also be provided for budgeting

Exhibit A, Owner's Consultant's Services.

EJCDC® D-500, Agreement Between Owner and Owner's Consultant for Professional Services—Design-Build Project.
Copyright ©2016 National Society of Professional Engineers, American Council of Engineering Companies,
and American Society of Civil Engineers. All rights reserved.

and for bid comparisons. Deliverables will include one hardcopy and digital copies of the documents needed for advertising and bidding of the project.

Specifications and Bid Documents lump sum fee: \$8,000

7) Direct Reimbursable Expenses

This fee includes reimbursable expenses as outlined in Paragraph 1.03 of the Agreement above.

Direct Reimbursable Expenses lump sum fee: \$380

12. After receipt of Owner's comments regarding the design and any other deliverables, make revisions as appropriate and submit the final construction plans and deliverables to Owner.

A1.04 *RFQ/RFP Phase – Excluded from this contract.*

A1.05 *Design-Build Phase – Excluded from this contract.*

A1.06 *Consultant Services Schedule*

Party	Action	Schedule
Owner's Consultant	Furnish a review copy of the conceptual design plan to Owner.	Within 60 days of the Effective Date.
Owner	Submit comments regarding the conceptual plans to Owner's Consultant.	Within 30 days of the receipt of conceptual plans from Owner's Consultant.
Owner's Consultant	Furnish the construction plans and lift station report to Owner prior to permit submittal.	Within 120 days of the receipt of Owner's comments regarding the conceptual design plan.
Owner's Consultant	Submit construction plans and lift station report to St Johns River Water Management District for permitting	Within 120 days of the receipt of Owner's comments regarding the conceptual design plan.
SJRWMD	Provide comments to Owner's Consultant.	Within 30 days of the receipt of construction plans from Owner's Consultant.
Owner's Consultant	Respond to SJRWMD comments regarding the construction plans.	Within 60 days of the receipt of SJRWMD comments regarding the construction design plans.
Owner's Consultant	Receive permit from SJRWMD and provide to Owner.	Within 30 days of the receipt of revised construction plans from Owner's Consultant.

Exhibit A, Owner's Consultant's Services.

EJCDC® D-500, Agreement Between Owner and Owner's Consultant for Professional Services—Design-Build Project.
Copyright ©2016 National Society of Professional Engineers, American Council of Engineering Companies,
and American Society of Civil Engineers. All rights reserved.

<u>Party</u>	<u>Action</u>	<u>Schedule</u>

ARTICLE A2 – ADDITIONAL SERVICES

A2.01 *Owner's Authorization in Advance Required*

- A. If authorized in writing by Owner, Owner's Consultant shall furnish or obtain from others Additional Services of the types listed below. Owner will pay for these services as indicated in Paragraph 1.02 and 1.03 of the Agreement.
1. Prepare applications and supporting documents (in addition to those furnished under Basic Services) for private or governmental grants, loans or advances in connection with the Project; prepare or review environmental assessments and impact statements; review and evaluate the effects on the design requirements for the Project of any such statements and documents prepared by others; and assist in obtaining approvals of authorities having jurisdiction over the anticipated environmental impact of the Project.
 2. Make measured drawings of or investigate existing conditions or facilities, or verify the accuracy of drawings or other information furnished by Owner.
 3. Perform services resulting from significant changes in the scope, extent or character of the portions of the Project presented or specified by Owner's Consultant or its design requirements including, but not limited to, changes in size, complexity, Owner's schedule, character of construction or method of financing; and revise previously accepted studies, reports, Conceptual Documents or other Contract Documents when such revisions are required by changes in Laws or Regulations enacted subsequent to the Effective Date of this Agreement or are due to any other causes beyond Owner's Consultant's control.
 4. Perform services resulting from evaluation by Owner's Consultant during the Design and Permitting Phase of alternative solutions in addition to those specified in Paragraph A1.02.A.1.
 5. Perform services required as a result of Owner's providing incomplete or incorrect Project information.
 6. Provide renderings or models for Owner's use.
 7. Identify opportunities for enhancing the sustainability of the Project.
 8. Undertake investigations and studies including, but not limited to, detailed consideration of operations, maintenance and overhead expenses; the preparation of feasibility studies, cash flow and economic evaluations, rate schedules and appraisals; assistance in obtaining financing for the Project; evaluating processes available for licensing and assisting Owner in obtaining process licensing; detailed quantity surveys of materials, equipment and labor; and audits or inventories required in connection with construction performed by Owner.
 9. Perform services attributable to more than one prime design contract.

Exhibit A, Owner's Consultant's Services.

EJCDC® D-500, Agreement Between Owner and Owner's Consultant for Professional Services—Design-Build Project.
Copyright ©2016 National Society of Professional Engineers, American Council of Engineering Companies,
and American Society of Civil Engineers. All rights reserved.

10. Perform services during out-of-town travel required of Owner's Consultant other than for visits to the Site or Owner's office.
11. Prepare for, coordinate with, participate in and respond to structured independent review processes, including, but not limited to, construction management, cost estimating, project peer review, value engineering and constructability review requested by Owner; and perform or furnish services required to revise studies, reports, drawings, specifications or other Proposal Documents as a result of such review processes.
12. Determine the acceptability of substitute materials and equipment proposed during the RFQ/RFP Phase.
13. Assist in connection with Proposal protests, rebidding or renegotiating contracts for construction, materials, equipment or services.
14. Assist Owner in the selection of an independent testing laboratory.
15. At Owner's request, visit the Site during construction, to observe the progress and status of the Work. Such visits and observations by Owner's Consultant are not intended to be exhaustive or to extend to every aspect of the construction in progress, or to involve detailed inspections of the construction beyond the responsibilities specifically assigned to Owner's Consultant in this Agreement and the Design Contract, but rather are to be limited to spot checking, selective sampling, and similar methods of general observation of the construction based on Owner's Consultant's exercise of professional judgment. Owner's Consultant will report to Owner on its observations.
16. Owner's Consultant shall not, during such visits or as a result of such observations of Designer's Work, supervise, direct, or have control over the Construction or the Site operations of any Constructor, nor shall Owner's Consultant have authority over them or responsibility for (a) the means, methods, techniques, sequences, or procedures of construction selected or used by Designer, or any Constructor, (b) for safety or security at the Site, (c) for safety precautions and programs incident to the construction activities of Designer, or any Constructor, or (d) for any failure of Designer or any Constructor to comply with Laws and Regulations applicable to Designer's furnishing and performing the Work. Owner's Consultant neither guarantees the performance of Designer nor any other Constructor, nor assumes responsibility for Designer's or any other Constructor's failure to furnish and perform the Work in accordance with the Design Contract.
17. Establish baselines and benchmarks for locating the Work if necessary to enable Designer to proceed. Provide engineering surveys and staking to enable Designer to perform its work, and any type of property surveys or related engineering services needed for the transfer of interests in real property; and provide other special field surveys.
18. Provide services relating to proposed substitutions of materials or equipment.
19. Assist Owner in preparation of change orders and work change directives as required.
20. Advise Owner on claims between Owner and Designer relating to the acceptability of the Work, or the interpretation of the requirements of the Design Contract pertaining to the execution and progress of the Work.

Exhibit A, Owner's Consultant's Services.

EJCDC® D-500, Agreement Between Owner and Owner's Consultant for Professional Services—Design-Build Project.
Copyright ©2016 National Society of Professional Engineers, American Council of Engineering Companies,
and American Society of Civil Engineers. All rights reserved.

21. Advise Owner as to the necessity of ordering special inspections or tests of the Work as deemed reasonably necessary, and receive and review all certificates of inspections, tests and approvals required by Laws or Regulations or the Design Contract. Owner's Consultant's review of such certificates will be for the purpose of determining that the results certified indicate compliance with the Design Contract and will not constitute an independent evaluation that the content or procedures of such inspections, tests, or approvals comply with the requirements of the Design Contract. Owner's Consultant shall be entitled to rely on the results of such tests.
22. Based on Owner's Consultant's on-site observations as an experienced and qualified design professional and on review of applications for payment and the accompanying supporting documentation:
 - a. Determine the amounts that Owner's Consultant recommends that Designer be paid. Such recommendations of payment will constitute Owner's Consultant's representation to Owner, based on such observations and review, that, to the best of Owner's Consultant's knowledge, information and belief, the Work has progressed to the point indicated, the quality of such Work is generally in accordance with the Contract Documents (subject to an evaluation of such Work as a functioning whole prior to or upon substantial completion, to the results of any subsequent tests called for in the Design Contract and to any other qualifications stated in the recommendation), and the conditions precedent to Designer's being entitled to such payment appear to have been fulfilled in so far as it is Owner's Consultant's responsibility to observe the Work.
 - b. By recommending any payment Owner's Consultant shall not thereby be deemed to have represented that observations made by Owner's Consultant to check the quality or quantity of Designer's Work as it is performed and furnished have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Owner's Consultant in this Agreement and the Design Contract. Neither Owner's Consultant's review of Designer's Work for the purposes of recommending payments nor Owner's Consultant's recommendation of any payment including final payment will impose on Owner's Consultant responsibility to supervise, direct or control such Work or for the means, methods, techniques, sequences or procedures of construction or safety precautions or programs incident thereto, or Designer's compliance with Laws or Regulations applicable to Designer's furnishing and performing the Work. Such reviews and recommendations will not impose responsibility on Owner's Consultant to make any examination to ascertain how or for what purposes Designer has used the money paid to it, or to determine that title to any of the Work, materials or equipment has passed to Owner free and clear of any liens, claims, security interests or encumbrances, or that there may not be other matters at issue between Owner and Designer that might affect the amount that should be paid.
23. Review maintenance and operating instructions, schedules and guarantees, receive bonds, certificates or other evidence of insurance required by the Design Contract, certificates of inspection, and tests and approvals.

Exhibit A, Owner's Consultant's Services.

**EJCOC® D-500, Agreement Between Owner and Owner's Consultant for Professional Services—Design-Build Project.
Copyright ©2016 National Society of Professional Engineers, American Council of Engineering Companies,
and American Society of Civil Engineers. All rights reserved.**

24. Within a reasonable time after notice from Owner that Designer considers the entire Work ready for its intended use, in company with Owner and Designer, conduct an inspection to determine if the Work is substantially complete. If Owner's Consultant considers the Work substantially complete, Owner's Consultant will recommend that the Owner issue a certificate of substantial completion to Designer.
25. Provide services, other than services during the operational phase, in connection with any partial utilization of any part of the Work by Owner prior to substantial completion.
26. Conduct a final inspection to evaluate the acceptability of the completed Work and advise Owner if the Work is ready for final payment. Owner's Consultant's advice will be based on its actual knowledge gained through the final inspection and prior observation.
27. Provide services during construction made necessary by (a) Work damaged by fire or other cause during construction, (b) defective, neglected or delayed Work by Designer, (c) acceleration of the progress schedule involving services beyond normal working hours, or (d) default by Designer.
28. Provide assistance in connection with the refining and adjusting of any Project equipment or systems.
29. Prepare operating, maintenance, and staffing manuals.
30. Assist Owner in developing systems and procedures for control of the operation and maintenance of and record keeping for the Project.
31. Together with Owner, visit the Project to observe any apparent defects in the completed Work, assist Owner in consultations and discussions with Designer concerning correction of such defects, and make recommendations as to replacement or correction of defective Work.
32. Prepare and furnish to Owner record drawings showing appropriate record information based on Project documentation received from others.
33. In company with Owner and Designer representatives, provide an inspection of the Project within one month before the end of the correction period to ascertain whether any portion of Designer's Work is subject to correction.

This is **Attachment 1, Owner's Consultant's Standard Hourly Rates and Reimbursable Expenses**, referred to in and part of the Agreement between Owner and Owner's Consultant for Professional Services dated [].

Part One: Standard Hourly Rates Schedule

A. Standard Hourly Rates:

1. Standard Hourly Rates are set forth in this Attachment 1 and include salaries and wages paid to personnel in each billing class plus the cost of customary and statutory benefits, general and administrative overhead, non-project operating costs, and operating margin or profit.
2. The Standard Hourly Rates apply only as specified in Paragraphs 2.02 (if applicable) and 2.03 and are subject to annual review and adjustment.

B. Schedule:

Project Role Unit Rates	Abbreviation	Rate/Hr
Principal	PR	\$225.00
Vice President	VP	\$185.00
QA/QC Manager	QA	\$160.00
Senior Project Manager	SrPM	\$175.00
Project Manager	PM	\$150.00
Senior Professional Engineer	SrPE	\$170.00
Professional Engineer	PE	\$150.00
Project Engineer, EI - III	EI-III	\$130.00
Project Engineer, EI - II	EI-II	\$120.00
Project Engineer, EI - I	EI-I	\$110.00
Senior Planner	SrPL	\$160.00
Planner	PL	\$130.00
Sr. Landscape Architect	SrLA	\$160.00
Landscape Architect	LA	\$130.00
Senior Construction Inspector	SrCEI	\$115.00
Inspector	CEI	\$95.00
CAD Designer - I	CAD I	\$90.00
CAD Designer - II	CAD II	\$105.00
Senior CAD Designer	SrCAD	\$125.00
Director of Marketing	DirMktg	\$60.00
Senior Graphic Designer	SrGD	\$105.00
Graphic Designer	GD	\$85.00
Controller	CTR	\$95.00
Administrative Support	AA	\$60.00

Part Two: Reimbursable Expenses Factors

1. Owner's Consultant shall be entitled to reimbursement of expenses under Parts Two and Three only as specified in Paragraph 1.03 and 1.04.
2. Owner shall reimburse Owner's Consultant for the expenses listed in Part Three below subject to an administrative factor of 1.0 unless another factor is indicated for a specific reimbursable expense.

Part Three: Reimbursable Expenses Schedule

Reproduction Costs	Rate/Sheet
24x36 BW	\$2.00
11x17 BW	\$0.50
8.5x11 BW	\$0.25
24x36 Color	\$50.00
11x17 Color	\$0.80
8.5x11 Color	\$0.40
Foamboard Mount (including color plot)	\$65.00

Mileage Costs	Rate/Mile
Mileage	\$0.560